THE

Rights and Priviledges

OF THE

CITY of LONDON

PROVED

From { *PRESCRIPTION*, *CHARTERS*, and *ACTS* of *PARLIAMENT*.

WITH

A large PREFACE,

SHEWING,

How Fatal the late Proceedings in *Westminster-Hall* in Dissolving CORPORATIONS were,

TO THE

Original Constitution

OF THE

ENGLISH GOVERNMENT.

Deut. 27. 17.

Cursed be he that removeth his Neighbours Land-mark; and let all the People say, Amen.

LONDON,

Printed and are to be sold by *Richard Baldwin*, near the *Black-Bull*, in the *Old-Baily*. 1689.

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To the Honourable

Sr. George Treby, Kt.

Sollicitor General to the King's moſt Excellent Majeſty, and Recorder of the moſt Antient and Famous *CITY* of *LONDON*;

To the Honourable

Sir *Robert Clayton*, Kt.
Sir *Patience Ward*, Kt.
Alderman *Love*, Eſq;
Alderman *Pilkington*, Eſq; } Members of the Honourable Houſe of Commons, for the ſaid City;

And to the Right Worſhipful

Sir *John Lawrence*, Kt.
Sir *Thomas Stamp*, Kt.
Sir *Samuel Daſhwood*, Kt.
Sir *William Aſhhurſt*, Kt. } and Aldermen;

And to the Worſhipful

Mr. Deputy *Flavell*,
Mr. *Michael Godfrey*,
Mr. *John Hammond*,
Mr. *John Morrice*,
Mr. *Peter Hublon*,
Mr. *Leonard Robinſon*,
Mr. *John Cox*, of *Bridge-Ward*, and
Mr. *James Hublon*, } Commoners of the ſaid City;

To whom the Care of Reverſing the *Judgment*, given upon the *Quo Warranto* againſt the Franchiſes of the City of *LONDON* in the Reign of King *Charles* the Second, is committed:

The Author of theſe following Sheets does moſt humbly Offer, and Dedicate them.

A General Preface.

THE Reader ought to be informed, that this Treatiſe was Written and Printed in the year 1683. whilſt the Author had the honour of being engaged about this ſubject matter, in the ſervice of the *City of LONDON*, which, my Lord Chief Juſtice *Coke* ſays, is, *tanquam Epitome Totius Regni.* 8. *Rep:* 127. *b.*

But upon Conſideration that the Violence of thoſe times would not permit it with ſafety to appear abroad in the World, he was adviſed not to venture out in the Storm that then raged, for fear of a Shipwrack both to him and his Veſſel.

This made him keep ſnug in Harbour, and reſolve not to put forth, ſo long as ſuch a hoaming Sea laſted.

There was a Scandalous Obſervator, that had ſhameful Allowances given him by Men of Vogue and Mode in thoſe days, weekly to divide the Nation, and to lay a Foundation of Feuds and Contentions among the People.

None, whom he and his Abettors had Predeſtinated to Ruine or Infamy, could eſcape the laſhes of his Virulent Pen, but were repreſented to be of that Party, the Buffoon Libeller was then hired to render moſt Obnoxious, that ſo they might (according to the train laid) be born down and cruſhed by the Crowd, who were eaſily inflamed by allowed Reproaches.

And tho the Law was made at all times to give Remedy for every ill or defamatory word, which tends to the blaſting of a Man's Reputation, hindrance of him in his Trade, or Profeſſion, or breach of the Peace; yet thro' the Iniquity which then prevailed and reigned, it was become vain, I had almoſt ſaid impoſſible, to bear up againſt the Torrent of foul and Sarcaſtical Language, by which all peaceable and good Subjects were at pleaſure made, as on a Stage, the Objects of unjuſt Scorn and Deriſion.

There were then a ſtrange ſort of People among our ſelves, whoſe Zeal was as blind as it was bitter and intemperate; and whoſe Religion conſiſted chiefly in an implicite, active, *unreſerved Obedience*, to the Will and Pleaſure of their Prince: Theſe, from their Exceſſes of a new Notion they had got of Loyalty, applauded by ſome that were making havock of the Government, and were erecting a new one, becauſe they had

rendered themſelves too Criminal to live under the Old; I ſay, Theſe were not to be contented, without bringing direct Slavery upon us (the unavoidable effect of Voluntary Surrenders) by deſtroying Charters, and the Municipal Rights of the Corporations of the Kingdom.

The ſad Proſpect of this reſolved Phrenzy in an Obſtinate Party, who then conſidered little, but ſuffered themſelves through Diſhoneſty, or Weakneſs and Folly, to be fleered out of a Senſe of their true and undoubted Intereſt, and to be Cajoled and Wheadled into Courſes, which apparently tended to their own, and the Publick Ruine; this was the real and only Cauſe of the Author's being engaged in theſe following Sheets.

He hopes by this time all Parties have laid aſide their factious Animoſities, are become wiſe from their own thoughts and recollections, and have recovered their underſtandings to a due temper, from which they have ſo long ſeemed wretchedly aliened; and will not now take it ill to have their Judgments informed, ſo long as he will inſtruct them in nothing but in matters relating to their own peace and ſafety, and therein only will tell them the Truth, which uſually carries with it an Irreſiſtible force; but though it may be clouded for ſome time, yet it can never be overcome, becauſe it always ſtands firm upon feet of Iron, without any Mixture of Clay.

2. *Ro. Rep.* 502. This we have aſſured to us from the Preamble of an Act of Parliament, and *the Parliament is all the Realm.*

Let us then hear what the whole Realm hath long ſince delivered to us of the Power of Truth, and that in a Popiſh Reign.

Raſt. Stat. 1. *Mar.* cap. 1. Seſſ. 2.

'For as much as Trueth (being of her owne Nature of a moſt 'Excellent Vertue, Efficacy, Force and Working) cannot but 'by proceſs of time break out, and ſhew her ſelf, howſoever for 'a while, ſhe may by the Iniquity and Frailtie of Man, be ſup'preſſed and kept cloſe; and being revealed and manifeſted, 'ought to be embraced, acknowledged, confeſſed and profeſſed, 'in all caſes and matters whatſoever, and whomſoever they 'touch or concern, without reſpect of perſons; but in ſuch 'caſes and matters ſpecially, as

'1. Whereby the Glory and Honour of God in Heaven '(who is the Author of Trueth it ſelf) is to be ſpecially ſet 'forth. And,

'2. Whereby alſo the Honour, Dignitie, Suretie, and Pre'ſervation of the Prince, and Ruler under God in Earth 'dependeth. And,

'3. The Welfare, Profit, and Special Benefit of the Uni'verſal People, and Body of a Realm, is to be continued 'and maintained.

This Artifice of ſurrendring and giving Judgment againſt Charters, ſtruck at the Root of all theſe three, and no leſs in Conſequence was deſigned by it, than the utter Deſtruction of our Ancient, moſt Famous Government, and our long enjoyed *Engliſh* Liberties.

We

We uſed to account our ſelves a People happy beyond moſt, or rather any Nation in the World, living under a Government ſo rarely tempered by Law, that in it we had all the Advantages of other Conſtitutions. *Dr* Burnet's *Serm. before the Houſe of Commons*, 22 Dec. 1680. pag. 8.

As the Subjects of the King are Born to Lands and other things, ſo (ſays the Learned Commentator) are they Born to inherit and enjoy the *LAWS* of this Realm, that ſo every man may have an equal benefit by the Law. *Plaud.* 55. b. *Kitch. of Courts*, pag. 4.

It is therefore called Common Right, and is a greater Inheritance to every Man, than that which deſcends to him, as Heir, from his Parents.

Becauſe thereby his Goods, Lands, Wife, Children, his Body, Life, Honour, and Eſtimation, are protected from Injury and Wrong. 2 *Inſt.* 56.

Thus we read, That by the Statute of *Magna Charta*, "it is "Enacted, That no Freeman ſhall be taken, or impriſoned, or "be diſſeiſed of his Freehold or Liberties, or free Cuſtoms, or "be Outlawed, or Exiled, or any otherwiſe deſtroyed, nor "we ſhall not paſs upon him, nor condemn him, but by law- "ful Judgment of his Peers, or by the Law of the Land. We "ſhall ſell to no Man, we ſhall deny, nor defer to no Man, ei- "ther Juſtice or Right. *Mag. Char.* 9 *H.* 3. c. 29.

By the 5 *E.* 3. "It is Enacted, That no Man ſhould from "thenceforth be attached by any Accuſation, nor fore- "judged of Life, nor of Limb, nor in Lands, Tenements, "Goods, nor Chattels ſeiſed into the King's hands againſt the "form of the great Charter, and the Law of the Land. 5 *E.* 3. c. 9.

By the 25 *E.* 3. called "the Statute of Purveyours, it is Ena- "cted, That none ſhall be taken by Petition, or Suggeſtion "made to the King, or his Councel, unleſs it be by Indictment, "or Preſentment of his good and lawful People of the ſame "Neighbourhood, or by Proceſs by Writ Original at the Com- "mon Law. 25 *E.* 3. c. 4.

"And that none be ouſted of his Franchiſes, nor out of his "Freehold, unleſs he be duly brought in anſwer, and forejudged "of the ſame by way of Law; and if any thing be done againſt "the ſame, it ſhall be redreſſed, and holden for None.

It is againſt the 28 *E.* 3. "that Any Man of what Eſtate or "Condition that he be, ſhould be put out of Land, or Tene- "ment, or taken, or impriſoned, or diſinherited, or put to "death, without being brought in Anſwer, by due Proceſs of "the Law. 28 *E.* 3. c. 3.

"By the 37 *E.* 3. wherein the Great Charter is recited, "which ſays, No man ſhall be taken or impriſoned, nor put "out of his Freehold, without Proceſs of the Law; nevertheleſs "divers People make falſe Suggeſtion to the King himſelf, as "well for Malice as otherwiſe, whereof the King is often "grieved, and divers of the Realm, put in Damage, againſt the "form of the ſaid Charter: Wherefore it is ordained, That all "they that make ſuch Suggeſtions, be ſent with the Sugge- "ſtions 37 *E.* 3. c. 18.

"ſtions before the Chancellor Treaſurer and his Councel, and "that they there find Surety to purſue their Suggeſtions, and "incur the ſame pain that the other ſhould have had, if he "were attainted, in Caſe that his Suggeſtion be found Evil. "And that then Proceſs of the Law be made againſt them, "without being taken or impriſoned againſt the form of the "ſaid Charter, and other Statutes.

38 *E.* 3. c. 9. And by the 38 *E.* 3. it is declared, "That as to the Article "made at the laſt Parliament of thoſe that make grievous Com- "plaints to the King himſelf, It is aſſented, that if he that ma- "keth the Complaint, cannot prove his Intent againſt the De- "fendant, by the Proceſs limited in the ſame Article, he ſhall "be commanded to Priſon, there to abide till he hath made "gree to the Party of his Damages, and of the Slander that he "hath ſuffered by ſuch Occaſion, and after ſhall make Fine and "Ranſom to the King. And the Point contained in the ſame "Article, That the Plaintiff ſhall incur the ſame pain, which "the other ſhould have, if he were attainted, in caſe that his "Suggeſtion be found untrue.

42 *E.* 3. c. 3. "It is likewiſe of the Requeſt of the Commons by their "Petitions put forth in the 42 *E.* 3. to eſchew the Miſchiefs "and Damage done to divers Commons by falſe Accuſers, "which oftentimes have made their Accuſements more for "Vengeance and ſingular profit, than for the profit of the King "or of his People, which accuſed Perſons, ſome have been "taken and cauſed to come before the King's Councel by Writ "and otherwiſe, upon grievous pain againſt the Law: It is "aſſented and accorded, for the good Governance of the Com- "mons, That no Man be put to anſwer without Preſentment "before Juſtices, or thing of Record, or by due Proceſs, and "by Writ Original according to the *OLD LAW* of the Land. "And if any thing from thenceforth be done to the Contrary, "it ſhall be *VOID* in the *LAW*, and holden for *ER- "ROUR.*

11 R. 2. c. 10. *Vid. Sir* Rob. Cott. *Abr.* 1 R. 2. *nu.* 96. I will name but one more. By the 11 *Ric.* 2. "It is Or- "dained and Eſtabliſhed, That neither Letters of the Signet, "nor of the King's Secret Seal ſhall be from thenceforth ſent in "Damage or Prejudice of the Realm, nor in Diſturbance of "the Law.

I hope the Reader will not think himſelf tyred with the Recital of theſe Statutes, becauſe they are of ſo near, and ſo important a Concern to every Subject of the Realm, as to the full Enjoyment of his Common Right; All which do prove, how juſtly the Laws are called the Great Inheritance of every Subject, and the Inheritance of Inheritances, without which Inheritance we have no Inheritance.

12 *Co.* 64. This Common Right is called the Law of the Subject, and the Judges are Sworn to execute Juſtice (as my Lord *Coke* ſays) according to Law and Cuſtom of *England.*

The

The King's Prerogative is called Law too; because, as it was resolved, the King hath no Prerogative, but that which the Law of the Land allows him. *Idem. 76.* Judge *Jenkin's* Works, *p.* 131.

Britton, who was a famous Lawyer, that lived in the days of King *Edward* the First, calls this, *Droit le Roy*; and so likewise does the Statute of *Westminster*, the first in the fiftieth Chapter. That is to say, the King's Right, the King's Right of his Crown, or the Right of the Crown. *Cowel's* Interp. *tit.* Britton. *Brit.* p. 1. 2 *Inst.* 263.

The Common Law (says *Plowden*) hath so admeasured the Prerogatives of the King, that they should not take away, nor prejudice the Inheritance of any. Plowd. *Com.* 236.

This proves the great Truth of the Year-Book, that the Law is the most High Inheritance that the King hath, as well as the Realm; for, by the Law, both He himself and All his Subjects are ruled, and that if the Law were not, there would neither be King, nor Inheritance. 19 *H.* 6. 63. a.

Therefore the King's Interest and the People's are inseparable in the Construction of Law.

The Prince is invested with a Power to see the Laws (which he hath sworn to observe and keep at his Inauguration) put in Execution.

And the Rule of his Exercise is those Laws, which are not Established without the Consent of the People. *Vid. Dr.* Falkner's *Christian Loyalty*, pag. 398.

To secure our Liberties, that we may have no need to fear the least Diminution of them, is not to extend the Prerogative beyond its due limits. *Lord Keeper's Speech to both Houses of Parliament*, 7 Jan. 1673 fo. 9. 4°.

The Law only ought to be the Indifferent Arbiter betwixt the King and his Subjects.

The Law having distributed the King's Judicial Power to his several Courts of Justice, Judges have no Power to judge according to that which they think to be fit, but that which out of the Laws they know to be right, and Consonant to Law. *7 Co.* 27. a. *Calvin's* Case.

Says the Lord Keeper *Coventry* in his Speech to Sir *John Finch*, at the time he was to be made Chief Justice of the *Common Pleas*. 16 Octob. 1634.

'New Opinions are many times in a Councellor retained to 'defend a side, but they stand not with the Gravity of a Judge. 'To invent, or find any thing is commendable in a Councellor, 'but let a Judge stand *super antiquas vias*; for *Lex Loci*, & '*Consuetudo Angliæ* is All in all. *Dr.* Franklin's *Annals*, fol. 453. 2 Col.

'The *Debitum Justitiæ*, which is the Debt of a King primarily, by a secondary means becomes the Debt of Judges, 'and under as great Bonds as may be: Greater there cannot be to bind the Consciences of Men. *Idem, Ibid.* 1 Col.

'The First Bond is *Debitum Patriæ*, due to All the King's 'People, whose Causes and Pleas are the proper Subjects of 'this Tribunal, and whose flourishing Estate depends much upon the Just Proceedings of this Court. Were there no Other 'Motive, yet this that prevails among the Heathen, *Amor Patriæ*, were strong enough to make Judges desirous of their 'Duty.

'The Second is, *Debitum Regi*, for He truſts them with 'his Richeſt Treaſure, that which is Dearer than the Ap-'ple of his Eye. His Juſtice is One prime part of his Oath 'at his Coronation, *facies fieri in Omnibus Juſtitiam æquam* '*& rectam*: and what you are to give the King for this, 'you ſhall need to go no further than your Oath, the Neg-'lect of which puts you to the Will of the King, for Body, 'Lands, and Goods.

'The Third, the Greateſt of All, *Debitum Deo*, as he is the 'Fountain of All Juſtice, and a fearful Avenger of them that 'do the contrary.

This was good Advice, and ſtrictly obſerved (as well as taught) by our former Reverend Sages of the Law.

They religiouſly conſidered, that the Oath of God was upon them, and that they were bound to God in a full diſcharge of their Oath: that the Seat whereon they ſate, was Gods; 'ſo 'as the Judgments that were executed, were not the Judgments 'of Men, but of God, and he was with them in the Cauſe, and 'in the Judgment.

Noy, 174.

They likewiſe well knew, that his Judges had the Cuſtody and Guard of the King's Oath: that the Faith of a Prince was a Sacred Point, which when once blaſted, could never be recovered; and therefore their great Care and Solicitude was to execute Juſtice according to his Oath; which, as Mr. *Sheringham* affirms, next to the Glory of God, is the chief End of Government.

12 *Co.* 25.

Supremacy Aſſerted, pag. 38.

Although they would readily acknowledge, that the King's Commands were to be obeyed; yet they would ſtill inſiſt, that a Legal way was to be uſed, to put them in Execution.

Jones, 276.

Says *Geoffrey le Scroope*, Chief Juſtice of the King's Bench, if the King will command us by his Writ to do a thing which cannot be done by Law, we will not do it.

1 *E.* 3. 26. b.

And good reaſon for it; for otherwiſe they ſhould moſt wretchedly violate their own Oathes, and the Oath of the King which they have in Charge, and do what in them lies to make him believe, that Perjury is One of his Inſeparable Prerogatives.

It will not be denied, that the King is entruſted with the Supreme Executive Power: but the Law of *England*, for the applying of that Power, (which it hath ſettled in Majeſty) to particular caſes and occaſions, hath ſet down a Method, and known Rules, which are neceſſarily to be obſerved.

The Law ſays, The King is the Fountain of Juſtice; and All Juſtice, which is done within the Realm, is ſaid, and ſaid properly, to flow from this Fountain; but then it muſt always run in the certain and known Channels that the Law hath preſcribed.

Vi. Judge *Jenkin's* Works, *p.* 134. *Mirror*, ch. 5. Sect. 1. pag. 225.

Thoſe, who will flatter a King, that He is ABOVE the Law, do moſt notoriouſly contradict one of the firſt Axioms of our Regal Government, which is, that *Lex facit Regem*, and he hath

hath originally subjected himself to the Law by his Coronation Oath.

Occurrit Alia Adulatorum Turba prudentiæ nomine commendata, qui ut se in gratiam Regum insinuent *illis persuadent Eos esse SUPRA leges, (& post aliqua) Nunquam in Regnis & civitatibus homines scelerati defuerunt, nec hodie desunt qui Principes Erroribus turbulentis inficiant, quibus illi quidem annumerandi sunt, qui cum se Jure-consultos existimari velint Regibus persuadent illos omnino solutos esse legibus. Osorius, lib. 5. de Regis Institutione.*

This made that Famous Judge *Bracton* to say, *Rex habet superiorem, Deum scilicet, item Legem, per quam factus est Rex.* *Bracton*, l. 2. c. 16. *Fleta*, l. 1. c. 5.

And the Mirrour of Justices informs us, that 'After the 'great Wars, Tribulations, and Troubles, which the *Saxons* 'had suffered for a long time, they reduced the Heptarchy 'into an entire Monarchy, by choosing one King to Reign 'over them, to maintain and defend their Persons and Goods 'in Peace, by Rules of Law. And (says *Horn* who wrote it) at 'the beginning they made the King to Swear, that he should 'govern his People by Law, without having regard to the per-'son of any one; and that *he should be Obedient to suffer Right*, '*as well as his other people should be.* *Mirror*, ch. 1. Sect. 2.

This proves a King of *England* to be King by Law; as also that the Coronation Oath is a fundamental Law of this Kingdom, and is antecedent to the Subjects Homage and Oath of Fealty, and that our first Monarch was made so by our own Consent.

Indeed, as the Venerable Mr. *Hooker's* words are, it is impossible that any, over a whole Grand Multitude, consisting of so many Families, as every Politick Society in the World doth, should have compleat lawful Power, but by consent of Men, or immediate appointment of God, because not having the Natural Superiority of Fathers, their power must needs be either Usurped, and then unlawful, or if lawful, then either granted or consented unto by them, over whom they exercise the same, or else given extraordinarily from God, unto whom all the World is subject. *Hooker's Eccles. Pol.* lib. 1. Sect. 10. f. 86.

Our Kings, saith he, in another place, when they are to take possession of the Crown they are called unto, have it pointed out before their Eyes, even by the very Solemnities and Rites of their Inauguration, to what affairs by the same Law their Supream Power and Authority reacheth. *Idem*, lib. 8. fo. 446.

It is therefore (to call it no worse) a great *Absurdity* in any to affirm, that the King can be above that, by which he is made King.

This Argument, *ab Absurdo*, was made use of long ago by our Peers of this Realm, as I find it recorded in the Annals of *Barton*, in these words, *Si Rex est SUPRA Legem, tunc est EXTRA Legem, Non Rex Angliæ est EXLEX.* That is, If the King be ABOVE the Law, then he is OUT of the Law; now is the King of *England* an Out-Law?

No, but he is a Legal King, his Authority is under a Legal Extent, and as *Fortescue* says, his Power Royal is restrained by *Fortesc. de laudibus Legum Angliæ*, cap. pag. 26. b.

Power

Power Politick; his words are, *Poteſtas Regia Lege Politica cohibetur*; and this was the Law and Conſtitution of the Kingdom.

Therefore a Kings Grant of any Favour, made contrary to Law, is void, according to another Axiome of our Government, *Nihil Aliud poteſt Rex*, &c. *quam quod de Jure poteſt.* He can do nothing as a King, but what he can Legally do. So that it is made the very Eſſence of our King, to govern according to Law; for where the will governs, and not the Law, there he is no longer King; *Ubi voluntas imperat, & non Lex, ibi non eſt Rex.*

Bracton.

Idem.

Therefore the Law is to be the only Rule and Meaſure of his Government; and upon this account it is truly ſaid, that a King of *England can do no Wrong*, nor will his Prerogative be any Warrant to him to do an Injury to any one.

Noy, 182. 1 *Co.* 44. b. *Plowd.* 247. a. *Jenkin's* Works 41. *Forteſc.* c. 9. 25. b. 9 *Co.* 123. a. *Bro. abr. tit. Prerog.* n. 15. 18. 53.

He cannot by his Grant or Charter alter a Law, nor change a Law, nor alter Inheritance; for this would be wrong, which he cannot do.

The King hath a Prerogative to wave his Demurrer, and plead to Iſſue, or to wave his Iſſue, and demur to the other's Plea; but then ſays *Plowden*, if he and the Party be at Iſſue, he cannot change his Iſſue any other Term, for then he may do it *in infinitum*; and the party may thereby loſe his Inheritance, and therefore the Common Law will not ſuffer the King to have ſuch a Prerogative.

Plowd. Com. 236. a. *Wyllian vers* Lord *Berkley.*

So that we ſee plainly the Prerogative is bounded by the Common Law, and the King keeping firm and ſteady to thoſe Rules in his Government, the Law declares, He can do no Wrong.

Not but that the King in his Natural Capacity is ſubject to like Infirmities, Paſſions, and diſordered affections as other Men; but to preſerve him from which the Law of God and the Land have ordained Prayers and Supplications to be made for him, that his Subjects may live peaceably under him in all Godlineſs and Honeſty.

If the Subjects be oppreſſed or injured, the Magiſtrates, that are by Law his Eyes and Hands, muſt anſwer for it, and receive condign Puniſhment. Which Parliaments (inſtituted partly for that End) ſeldom fail to inflict; not fearing to queſtion Offendors of the greateſt Magnitude, and bring them upon their Knees, who unmercifully have tyrannized over their fellow Subjects, and abuſed to deſtruction the Power given them by the King, and the Laws, for Protection and Safeguard.

Several of our Judges therefore in Antient times, have vigorouſly refuſed to obey the King's Letters, and Patents, becauſe he hath been miſ-informed in them, and they have been againſt the Law of the Land,

These things are tranſmitted down to us upon Record; and why are they left? but that it may appear to the Ages following, as the Book ſays, what great Care thoſe Reverend

Noy, 177.

Judges

Judges had to leave the Land and People in like Liberty to the Ages following as they found it, and ſo ought every Man in Conſcience in his place to have the like Care.

This Confluent courſe of Juſtice between the Higheſt and the Loweſt, maketh the Law Honourable, and the Judges and Councellors that paſs this Courſe, to be honoured and beloved of all Men. *Idem*, in Margin.

To go in Judgment by the ſure and fixed Rules of Law, as it is the beſt ſecurity from Error, ſo is it the greateſt ſupport of that Real Authority, which every good Judge muſt needs deſire to be cloathed with, and He that acts not out of this Circle, will always find the Bleſſing of an inward quiet and aſſurance, as a Natural Effect of his Upright Juſtice to All that come before him.

And we have ſeen, that after all the Irregularities and Convulſions that have been amongſt us, it hath ſtill been found neceſſary to return to the Old Channel, and obſerve the Landmarks which our Foreſathers have ſet us. Dr. *Burnet's* Serm. *ut ſup.* p. 8. 9. 22 Prov. 28.

Thoſe are the Good Old Laws of *England*, to which the King hath as often Occaſion to reſort, as the People; they being an Equal Sanctuary, and Shelter to Both.

Moſt divinely therefore *Archytas* maketh unto publick Felicity theſe four ſteps and degrees; Every of which doth ſpring from the former, as from another Cauſe, ὁ μὲν βασιλεὺς νόμιμος, ὁ δὲ ἄρχων ἀκόλουθος, ὁ δὲ ἀρχόμενος ἀπόλυπος, ἡ δὲ ὅλη κοινωνία εὐδαίμων, the King ruling by Law, the Magiſtrate following, the Subject free, and the whole Society happy. Adding on the contrary ſide, that where this Order is not, it cometh by Tranſgreſſion thereof to paſs that a King groweth a Tyrant; he that ruleth under him abhorreth to be guided by him or commanded; the People ſubject unto both, have freedom under neither, and the whole Community is wretched. In which reſpect, ſays the Judicious and Divine *Hooker*, I cannot chooſe but commend highly their Wiſdom, by whom the *FOUNDATION* of the Common-wealth hath been laid; wherein though no manner of Perſon, or cauſe be unſubject unto the King's Power, yet ſo is the Power of the King over all, and in all limited, that unto All his Proceedings the *LAW* it ſelf is a Rule. *Hooker's* Eccl. *Polit.* lib. 8. fo. 446.

The Officers and Miniſters of the King are to ſerve him according to the Laws and Statutes of the Realm.

Theſe Laws and Statutes have all along taken care to preſerve the Rights and Privileges of this moſt Renowned and Antient City of *LONDON* (the *Caput Regni*, as *Math. Paris* calls it) inviolable. *Mat. Paris.*

And the Great thing laboured for in the following Sheets, was the Eſtabliſhed Government and the Laws, and to keep (as the words of the Statute are) *the Antient Policies of this Noble Realm* from being *diſſolved and unjointed*. *Raſ.* Stat. 7 R. 2. cap. 12.

He has therefore proved from ſeveral Acts of Parliament, that it hath been the great Care of the Government in All Ages to preſerve the City of *London.*

Theſe Acts are as ſo many Open Declarations of the Immortality of it, and of all other Corporations.

Grot. de Jure B. & P. l. 2. c. 9. Sect. 10. 21 E. 4. 13. a.

Hugo Grotius tells us plainly, *Civitates eſſe Immortales*, the Mayor and Sheriffs may die, and be changed; but ſo cannot the Commonalty: And the Venerable *Hooker* is of the ſame Judgment too; for, ſays he, 'Corporations are Immortal; 'we were then alive in our Predeceſſors, and they in their 'Succeſſors do live ſtill.

Hook. Ec. Pol. *l.* 1. Sect. 10.

The Judges in former times did always uſe to ſhow a Greater Indulgence to the Antient Liberties, and free Cuſtoms of the City of *LONDON*, than to any other Corporation in the Kingdom, and that becauſe it was *LONDON.*

No Judges in any State or Kingdom under the Sun, have more reverenced the Opinions and Judgments of their Predeceſſors, than the Judges of *England* have ever done, as may be noted by the memorable Saying of *Askue*, 37 *H.* 6. f. 22. *Such a Charter hath been allowed in the time of our Predeceſſors, who were as Sage and as Learned as we be*; And of *Markham*, 4 *E.* 4. fo. 41. *It is good*, ſaith He, *for us to do as it hath been uſed in former times: ----the former Precedents are enough for us to follow.*

Davie's Rept. in Pref. 37 H. 6. 22. b. 4 E. 4. f. 41. a.

And ſaith another Judge, *We will not change the Law which always hath been uſed.*

38 E. 3. 1. a.

Nay, Another goes further, *It is better*, ſays he, *that it be turned to a Default, than the Law ſhould be changed, or any Innovation made.*

2 H. 4. 24. b. 1 Inſt. 282. b.

All Innovations are of dangerous Conſequence, and therefore ought at all times by the Judges more eſpecially to be avoided.

For every Innovation, is, (ſo far at leaſt) an Overthrowing of the Fundamental and Antient Laws of the Kingdom; and Thoſe that have offered to trample them under their feet, have ſeldom fail'd finding in the End, that Thoſe Laws have proved hard enough to break their Necks, or to make them branded Examples of Shame and Infamy to all Poſteritie.

You will find inſtances hereof in the following Diſcourſe, and therefore one will be enough to inſert here.

Rot. Parl. 11 R. 2. *Pars* 1, 2, 3.

In the 11 *R.* 2. *Treſilian*, and five Judges more, with one of the King's Serjeants at Law, and one of the King's Councel at Law, for delivering their Opinions, That the King might avoid a Statute, Ordinance, and Commiſſion, which had been made for the Safety of both King and Kingdom in the laſt Parliament, by the Peers and Commons of the Land, with the King's Aſſent (tho' the Court Adulators pretended it was by force extruded from him) I ſay, theſe Eight Perſons, for their extravagant, illegal and extrajudicial Opinions, were Executed, as *FALSE TRAITORS*, by a Judgment (Paramount Any to be given

Knyghton de Eventib. Angl. fo. 2963, 2964, 2965. 2726, 2727. 2728. *Ruſhw.* Collect. *lib.* 2. *Vol.* 2. *fo.* 260. *in the Appendix.*

given by the Judges in *Weſtminſter-Hall*, for it was) from the moſt Supream Court of Judicature in the Kingdom, *viz.* The Parliament.

Therefore anciently when any Cauſes have judicially come before the Judges in their Courts at *Weſtminſter*, that have been either of great Difficulty in themſelves, or of great and concerning Import to the whole Nation, Thoſe Judges would not preſume to give any final Reſolutions in them, but thought it their bounden Duty, as well as their Wiſdom, to refer them over to the next Parliament, and there humbly to offer them to the Parliament's Conſideration, for them to determine, and ſettle them.

Thus they did in the Caſe of 2 *E.* 3. in the Year-Book; The Lawfulneſs of a Patent granted by King *Edward* the Firſt to the Men of *Great Yarmouth*, &c. being in queſtion in the King's Bench, the Patent was demurred to, as being granted againſt Law; and after it had long depended in that Court, it was adjourned into Parliament, for the mighty Weight and Concernment of it. Term. *Hillar.* 2 E. 3. fo. 34. Pl. 19.

So by the Statute of 25 *E.* 3. *De Proditionibus*, is declared in certain particular Caſes, what Offences ſhall be taken to be Treaſon, with this Reſtriction, (ſays my Lord *Coke*) that if any other Caſe ſuppoſed to be Treaſon, ſhould happen before any Juſtices, the Juſtices ſhould tarry without going to Judgment of the Treaſon, till the Caſe be ſhewed before the King and his Parliament, whether it ought to be adjudged Treaſon, or other Felony. 3 *Inſt.* fo. 1. 2 *Inſt.* 590.

Many other inſtances might be produced to ſhew, that where Judges had before them matters of Doubtfulneſs, or of General Conſequence, they would ſtill adjourn them over to Parliament, as being above their Cognizance and Juriſdiction, and only worthy to receive Judgment from the Supream Legiſlative Power of the Nation.

This no Judge could be Ignorant of, who has (I do not ſay peruſed the Rolls of Parliament, where infinite Preſidents are to be found of Adjournments to enſuing Parliaments, but who has) only conſulted *Henry de Bracton*, a Learned Judge in *H.* 3. time, for he tells us, *ſi Aliqua Nova & inconſueta emerſerint, quæ nunquam prius evenerint, & Obſcurum, & difficile ſit eorum Judicium, tunc ponantur Judicia in reſpectum uſq; ad Magnam Curiam, ut ibi per Conſilium Curiæ terminentur*; that is, If any New and Unuſual Caſes happened, that had never come before, and the Judgment was obſcure and difficult, let thoſe Judgments in reſpect thereof be adjourned to the *Great Court*, there to be reſolved and decided. And this agreeth with our Books from time to time. *Bracton*, lib. 1. cap. 2. 2 *Inſt.* 408.

Nay in Caſes of leſs Conſequence, that have riſen upon a point before the Judges, how an Act of Parliament was to be conſtrued and expounded; They have thought it neceſſary to recur to the Parliament for them to explain the ſenſe and meaning

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ing of their Own Acts, before ever they would venture to interpret and declare it.

14 *E.* 3. c. 6. Thus the Statute of 14. *E.* 3. Enacts, that no Proceſs ſhall be annulled or diſcontinued by a *Clerk*'s miſtaking in Writing one ſyllable, or one letter too much or too little, but as ſoon as perceived, it ſhall haſtily be amended.

40 *E.* 3. f. 34 b. Upon which Statute a great doubt aroſe, in the 40. *E.* 3. whither a Word might be amended, becauſe the Statute does not expreſly provide for it; and the Judges were not ſatisfied to meddle in it, before they went to the Council, and demanded of them who made the Statute, how they would pleaſe to declare their Opinion; which was, that it might be amended.

Bro. Abridg. tit. Amendment, nu. 18.

8 *Co.* f. 158. a. *Blackamore's* Caſe. Note, ſays my Lord *Coke*, where it is ſaid in 40. *E.* 3. that the Juſtices went to Council, it appears by the 39. *E.* 3. that they went to the Parliament, to learn their Opinions who made the Law.

By all which it appears, how very ſcrupulous and tender our Judges in ancient times were, of tranſgreſſing the bounds of their Legal Authority; and what a Juſt fear they had upon them, of breaking the Law, or an Act of Parliament.

It would have been no Diſparagement, if ſome of our later Judges would have took the caution, to have trod in the ſteps of their Wiſe and Reverend Predeceſſors.

Raſt. Stat. 7 *E.* 6. cap. 12. Then would not this **Dejected Houſe of the Commonwealth have ſuffered ſo much Violation and Ruine** as it has, **by Exile of Juſtice in the time of their late evil Governance.**

They would never have attempted to have delivered ſuch an Extravagant Judgment againſt the City of *London*; that upon the Abuſe or Miſuſe of a Truſt, the very Corporation, or the Being of a Body Politick, which (Chief Juſtice *Pigot* ſays,) is but a Name, that cannot be ſeen, and is no ſubſtance, ſhould be forfeited, determined and diſſolved. For,

21 *E.* 4. 13. b. 1. This was a Caſe before them that was *Primæ Impreſſionis*, ſo that they could receive no light from any Authorities or Precedents in any of our Law Books, to guide and direct their Judgments in it.

The Notion of diſſolving a Corporation by a Judgment in Law was ſuch an Extravagance, ſuch a ſtretch of Fancy, as had never entered into any man's head before.

'Twas all Chimerical, Phrenzical, Unintelligible, Incomprehenſible to every one, but to thoſe Learned Oracles of the Law that the late Years of this Age have been bleſt with.

Otherwiſe ſure it would very well have become them, to have humbly ſubmitted it to the Judgment and Deciſion of a Parliament. But,

2. This was a Caſe, not only of dark Learning, but of the greateſt Conſequence that ever till then came into Judgment in *Weſtminſter-Hall*, for the Intereſt of the whole Kingdom was concerned in it. Not only the Fate of *London*, but of all the Corporations

Corporations of *England*; nay, of the very Conſtitution and frame of the Government it ſelf, did in a great meaſure depend upon the Reſolution of it.

One would have thought therefore, that a Caſe of ſuch mighty Difficulty, and of ſuch infinite Importance in its Iſſue and Effect, might have given ſufficient Caution to a Court of King's Bench, not to have dared to proceed to Judgment upon it, but to have adjourned a Caſe which affected All the People of Legal Intereſt in the Kingdom, to be determined by Thoſe who are the Only proper Judges to determine it, I mean, the Court Soveraign of the Kingdom.

Objection.

But it may poſſibly be pretended, That this was a Caſe which extreamly affected the King and the Government, and a thouſand Inconveniencies might have happened, if they ſhould have ſtay'd Judgment, till the King, (who is ſole Judge of the propereſt Seaſon,) had in his Princely Wiſdom thought fit to iſſue out his Writs of Summons for the meeting of a Parliament; And therefore to prevent the hazard of ſuch Inconveniencies, there was a preſſing Neceſſity upon the Court to deliver their Judgment.

Anſwer.

This may perhaps be a Pretence, but it is a very unwarrantable One, and ſuch, with ſubmiſſion, as ſeems no ways difficult to be anſwered. For,

1. Inconveniencies muſt not prevail with Judges to break their Oathes, and overturn the Laws; for nothing has ſo great Inconveniency in it as this has; Theſe being but partial, and this a total Inconveniencie. Beſides, *Sir* Geo. Mackenzie's *Jus Regium*, pag. 82.

2. The Government has always taken Care to prevent ſuch Inconveniencies, by ordaining that Parliaments ſhould be often holden, ſo that whatever may be alledged, there could be no real Neceſſity for their taking upon them a Province which cannot be juſtified belonged to them, but was a manifeſt Uſurpation and Encroachment of a Right, which belonged to a Superiour Juriſdiction.

Thus King *Alfred*, or *Alured*, did ordain by Authority of Parliament, That for ever twice a Year, or oftner, if need were, in time of Peace a Parliament ſhould be holden at *London*, *Pur Parlamenter ſur le guidement del People de Dieu, coment gents ſe garderont de pecher, viveront in quiet, reciveront droit per certein Uſages, et Saints Judgments.* 2 *Inſtit.* 408.

In a Letter ſent to the Pope in the Reign of *E.* 1. we read, That a Parliament was accuſtomed to be held in *England* about *Eaſter* every Year. *Rot. Clauſ.* 3 E. 1. *in Schedula.*

In *E.* 2. Reign, Upon complaint that divers Perſons were aggrieved by the King's Miniſters, againſt Right, of which Grievances they could have no Remedy, but by Parliament, it was ordained, That the King ſhould hold a Parliament once a Year, or twice, if need were. *Rot. Parl.* 5 E. 2. nu. 29. *Sir* Rob. Cotton's *Records*, fol. 1.

4 *E.* 3. c. 14.
36 *E.* 3. c. 10.
Cott. *Rec.* 50 *E.* 3. nu. 177.

So likewiſe was it Enacted in *E.* 3. Reign, two or three ſeveral times, That a Parliament ſhould be holden at leaſt once a Year.

Cott. *Rec.* 1 *R.* 2. nu. 95.
2 *R.* 2. n. 4.

And to name no more, it was twice Enacted in the Reign of *Richard* 2d, That a Parliament ſhould be yearly holden in Convenient Place, to redreſs delays in Suites, and to end ſuch Caſes as the Judges doubted of.

This was the End for which ſuch conſtant Proviſion was made, for the Parliament's frequent meeting; that ſo the Judges might make their Applications to them, upon Caſes of Difficulty depending in the Courts of *Weſtminſter-Hall*, and which were not fit for them to determine; but eſpecially when they were of ſuch Univerſal Conſequence to the whole Nation, as this of the Corporation of *London* was.

That Great and Learned Man, Mr. *Pollexfen*, to whom all the Unbyaſſed World pays a juſt and deſerved reſpect for his Eſſential Knowledge of the Law, in his Elabourate Argument upon this Caſe, ſays, 'It was a Point of as great Conſequence as ever 'came to that Bar, as if *Magna Charta* it ſelf were at ſtake; for 'he ſaw no Reaſon why all the Corporations in *England* will not 'be forfeited, as well as *London*; and, ſays he, what a vaſt part 'of *England* is concerned in the Corporations of *England*!——

Mr. Pollexfen's *Argument upon the* Quo Warranto *againſt the City of* London.

'If Corporations are forfeitable for abuſing their Corporation, 'as well Eccleſiaſtical as Civil, Archbiſhops, Biſhops, Deans 'and Chapters, Parſons, Vicars, Univerſities, Colledges, Ho'ſpitals of All ſorts, all the conſiderable Cities, Towns, and 'Boroughs in *England*, all are under the ſame poſition for 'ought I perceive.

'Nay, The very frame of the Government will be con'cerned. For one of the Eſtates of the Kingdom, to wit, the 'Commons in Parliament, I may call them ſo, (ſays he,) our 'Books do ſo, conſiſts of Knights, Citizens, and Burgeſſes ſent 'to Parliament to repreſent the Commons, and I think three 'parts of four of the Houſe, are Citizens and Burgeſſes who are 'uſually choſen by the Freemen of the Cities and Corporations, 'or otherwiſe where they are not choſen by the Freemen, yet 'their Elections are generally under the Influence and Power 'of thoſe that are Magiſtrates in thoſe Cities and Towns, or 'of the Body Politick, and the returns made by them.

For as he goes on, 'If this ſhould turn to be a forfeiture by 'the miſcarriage and Abuſer of the Liberty of a Corporation, 'I do not know very well how many Corporations at this day 'are no Corporations, then if they are no Corporations, who 'ſhall ſend Burgeſſes, who ſhall ſend Citizens?

'Then let us conſider the Influence this muſt needs have 'over all the Elections for that great Aſſembly, and how far 'it concerns that Aſſembly upon thoſe Statutes and Proviſions 'that have been made for Elections, that they ſhall be free, 'and not under danger, but that Men may give their Votes 'according as their own diſcretions and underſtandings may 'lead them.

This

This I have made bold to transcribe from his Argument which I have in Manuscript.

To which I shall superadd a Statute of *Richard* the Second, that every Person to whom it belongeth, shall upon Summons come to the Parliament; The words are these:

" *Item*, The King Will and Commandeth, and it is assented in " the Parliament by the Prelates, Lords, and Commons, That " all singuler Persons and Communalties, which from hence- " forth shall have the Summons of the Parliament, shall come " from henceforth to the Parliaments in the manner as they be " bounden to do, and hath been **accustomed** within the Realm " of *England* of **Old times**. And every Person of the same " Realm, which from henceforth shall have the said Summons " (be he Archbishop, Bishop, Abbot, Prior, Duke, Earl, Baron, " Banneret, Knight of the Shire, Citizen of Citie, Burgeis of " Burrough, or other singuler Person, or Communaltie, do " absent himself, and come not at the said Summons, (except " he may reasonably and honestly excuse him to our Sovereign " Lord the King) he shall be amerced, and otherwise punished, " according as of **Old times** hath been used to be done within " the said Realm in the said Case. And if any Sheriff of the " Realm be from henceforth negligent in making his return of " Writs of the Parliament, or that he leave out of the said re- " turns any Cities or Burroughs, which be bound and of old " times were wont to come to the Parliament, he shall be pu- " nished in the manner as was accustomed to be done in the " said Case in the said time past. 5 R. 2. St. 2. cap. 4.

And having thus shewn the Right of Summons, and coming to Parliament, the next work is to prove, that it hath been *accustomed of old times to have free Elections*; and this will be made clear from a Chapter in the Statute of *Westminster* the First, and my Lord *Coke*'s Comment upon it.

Sayes the Statute, " And because *Elections* ought to be free, " the King commandeth upon great forfeiture, that no Great " Man, nor other, by force of Arms, nor by Malice, or Me- " nacing shall disturb any to make free Election. *Westm.* 1. 3 E. 1. cap. 5.

I must previously observe here, That though it be said, *The King commandeth*, &c. this is not to be understood as a meer Emanation of Royal Favour, or New Bounty granted, which the People could not justly challenge, or had not a Right unto before; for this was a **Fundamental Law** and **Libertie** of *England*; No new Freedom was hereby granted, but a Restitution of such a One as the People of this Kingdom had lawfully before; and it was to free them from what had been usurped and encroached upon them by any Power whatsoever.

This was One of the Liberties that was confirmed to them above a Hundred Years before, by the Ninth Chapter of *Magna Charta*, which says, " The City of *LONDON* shall have all the " Old Liberties and Customes, which it hath been used to have: *Mag. Charta.* 9 H. 3. cap. 9.

And

And besides this, it goes on with a "Moreover We will and "grant, That All other Cities, Boroughs, Towns, and the "Barons of the Five Ports, and all other Ports, shall have all "their Liberties and free Customes.

Liberties are here taken for Privileges, such as (my Lord *Coke* says) of Right the People had before, and this Chapter was a Declaration of one Principal and Fundamental Law of *England*.

But to digress no longer from my Lord *Coke*'s Comment upon the before recited Chapter of *Westminster* the First.

2 *Instit.* 169. He bids us "see the Statute of 7 *H.* 4. that Knights of "Shires for the Parliament shall be chosen *libere & indifferenter*, "*sine prece, aut precepto.*

"There were two Mischiefs before the making of this Statute.

"1. For that Elections were not duly made.

"2. That Elections were not freely made.

"And Both these were against the Antient Maxime of the *Regula.* "Law, *Fiant Electiones rite & libere sine interruptione aliqua*; "and again, *Electio libera est*; for before this Act in the Irre- 7 *H.* 6. 12. a. "gular Reign of *H.* 3. The Electors had neither their free, nor "their due Elections, for sometimes by force, sometimes by "Menaces, and sometimes by Malice the *Electors* were framed, "and wrought to make Election of Men unworthy, or not "eligible, so as their Election was neither due, nor free: this "Act briefly rehearseth the old Rule of the Common Law (for "that Elections ought to be free) wherein both the said Points "are included, 1. It must be a due Election; and, 2. It must "be a free Election.

"This Statute doth Enact, That no Man upon grievous for- "feiture shall disturb any to make free Election, and is excel- "lently Penned in two respects:

"First, For that generally it extendeth to all Elections, that "is to say, to every Dignity, Office, or Place Elective, be it "Ecclesiastical or Temporal, of what kind or quality soever.

"Secondly, The Act is Penned in the Name of the King, "*viz.* The King commandeth; and therefore the King bindeth "himself not to disturb any Electors to make free Election, as *Westm.* 2. 13 E. 1. c. 1. "in the like case upon a Statute made in the Reign of the said 2 *Instit.* 332. "King; the Act saying, *Rex perpendens, &c.* the same bound "the King. Now that Electors might make free and due "Elections without displeasure or fear thereof, by this Act of "Parliament, as a sure defence, the King commandeth the "same upon grievous forfeiture: And this Act extends to all "Elections, as well by those that at the making of this Act had "Power to make them, as by those whose Power was raised, "or created since this Act.

"Grievous Forfeiture.] That is, the Disturbers to be punished "by grievous Fines and Imprisonment. Thus far my Lord *Coke*.

But now if Corporations can be surrendered, or forfeited, it is a very easie matter in a short time to put the whole Frame

Frame of the Government into the Hands of the Crown, and thereby to make the King of *England* as Abſolute in his Power, as the moſt Abſolute Monarch in the World.

For Firſt, as for the Lords Temporal, cannot the King, who by the Law is made the Fountain of Honour, make at any time as many Peers as he pleaſes, and under what Diſtinction of Characters he ſhall think fitting? Nay, if it be true what Dr. *Brady* and others have aſſerted, *viz.* 1. That Antiently Kings Summoned to Parliament what and which Barons they pleaſed, 2. That the *Barones Regni* were called to Parliament at the Kings pleaſure, 3. And that *Henry* III. *Appointed* and *Ordained*, that all thoſe *Earls* and *Barons* of *the Kingdom* of *England* to WHICH he thought FIT to *direct Writs* of *Summons*, ſhould come to his Parliament, and NO OTHERS; unleſs by CHANCE the King would direct other ſuch Writs to them.

Dr. Brady's *full and clear Anſwer* p. 226. *in* Margine, *id.* 227. *in* Margine.

ibid. *in* lib.

Or as Dr. *Johnſton* affirms in his Book, Entituled, *The Excellency of Monarchical Government*, &c. That by the Statute of *Marleburgh*, 52 *H.* 3. It is evident, that even all the Great Barons were not Summoned, but only the more diſcreet, and ſuch as the King thought fit to call.

Dr. *Johnſton*, ch. 26. fo. 226.

Or, what Sir *Robert Filmer*, Baronet, aſſured the World long ago from Mr. *Cambden*, who (he ſays) ſpeaking of the Dignity of *Barons*, hath theſe Words: King *Henry* III. out of a great Multitude which were Seditious and Turbulent, called the very Beſt by Writ or Summons to Parliament; for He, after many Troubles and Vexations between the King himſelf, and *Simon de Montfort* with Other Barons; and after appeaſed, did *Decree* and *Ordain*, that All thoſe Earls and Barons unto whom the King himſelf *vouchſafed* to direct his *Writs* of *Summons* ſhould come to his Parliament, and *No Others*: But that which he began a little before his Death, *Edward* I. and his Succeſſors conſtantly obſerved and continued, &c.

Sir. Rob. Filmer's *Grand Enqueſt* p. 18, 19.

Vid. Goddard's Plato's Dæmon *ad diſcourſe* p. 70. *to the ſame purpoſe.*

And, (to name no more) what the late Learned Knight, Garter Principal King of Arms, Sir *William Dugdale* has told us, that by the Records of the Summons of the Lords Temporal in *Edward* I. time, and after, it is not unworthy to be Noted, that ſome were never called above once, ſome twice, or more times, ſome during their Lives, but not their Diſcendants; as alſo that the Husbands of Sundry heirs Female, had Summons by the Title which the Anceſtors of ſuch heirs Female enjoyed; ſo likewiſe in the Caſe of Coheirs, the Husbands of which of them the Soveraign pleaſed to Honour therewith, and his Diſcendants by her.

Sir William Dugdale's *Summons of the of the Nobility to the Great Councils and Parliaments of this Realm in pref.*

I ſay, if All this be true, as theſe Learned Gentlemen have ſo poſitively declared, May it not be very Eaſie for the King by this means always to have an Over Ballance on his ſide? ſo that this Eſtate he can make his Own at Pleaſure.

Secondly, Nor is his Work more difficult as to the Spiritual Lords, they being ſo many diſtinct Corporations; and in their Spiritual Capacities they own themſelves not to be Infal-

liable, but subject to Errors in their Actings, as other Natural persons are; and therefore, under the same Rule of Law, to be forfeit, and determined, and by Consequence to have their Ecclesiastical Corporations totally dissolved: Or else they may through Fear or Favour be prevailed with to surrender their Bishopricks into the Kings hands, and then he can put in whom he pleases into their Room, and who he is sure will comply with his Measures. And what becomes then of the Spiritual Estate in Parliament? Will not that be too at the Mercy, Pleasure, and Disposal of the King?

So that we see, if Corporations be surrenderable or forfeitable, how easie a matter it is, for the King when he pleases, to make himself Absolute Master of his Upper House of Parliament.

And can he not likewise, by this New Court Doctrine, or Law of *Westminster Hall*, as easily gain the Ascendant over the Lower House?

By this Artifice of Surrendring, or Judgmenting to forfeiture, the Corporation of the City of *LONDON*, all the Cities, Burroughs, and Towns Corporate of *England*, would quickly have been brought into as great Subjection to the Controul of *White-Hall*, as Any of the Cities and Burroughs of *France* are to the Grand *Lewis* at *Versailes*; and then a Dismal Farewell to our *ORIGINAL* Constitution and Government.

I must beg leave here to make a small Digression; for I confess it is not directly consequential on what is just above Mentioned; but it shews (if it be true) that the King's Prerogative over the Members of the House of Commons to attend or serve in Parliament, is very Considerable, and that by it he may easily Mould a Lower House to be perfectly under his Obedience, and so far I think it will come up to my purpose.

The Kings Supremacy asserted p. 50. Says Mr. *Sheringham*, Parliaments as they are now Established, consisting of three Estates, the King, the Lords and Commons, are but of late Existence; and therefore such a Composition and Mixture of the said Estates cannot be by *Original Constitution*.

Id. p. 51. It is granted that the Commons were sometimes called to such Consultations, but that was a thing not Necessary, or Frequent, but Rare, Arbitrary and Contingent. There were no certain Persons designed by *Law*, whose concurrence was required to constitute a Parliament, but the King used the Advice of those only which he pleased to call unto himself, which were always such as He thought most able to Counsel and Direct him, in the matters that were to be consulted of, and whose assent was likely to add most Credit and Estimation to the Laws that were to be divulged.

Plato's Dæmon. p. 73. And says Mr. *Goddard* very Positively, so great was the Authority and Prerogative of our Kings over the House of Commons according to their Old *Constitution*, that they have in their Writs of Summons *Named* and *Appointed* the *Particular*

Persons

Perſons all over *England*, who were to be returned to their Parliaments: ſometimes have ordered, That *only One Knight* for the Shire, and *One Burgeſs* for a Corporation, ſhould be ſent to their Parliaments, and thoſe alſo *named to the Sheriffs*, and ſometimes more; as may be ſeen by the very Writs of *E.* 2. and *Edw.* 3.

So that here is a very ready way laid down for any King to command what Houſe of Commons he pleaſes. But once more.

It is Aſſerted by Dr. *Brady*, That the King and his Councel were Judges whither, and when Burgeſſes ought to come to Parliament. Dr. *Brady*, *Ut ſupra*, pag. 79.

That King *Edward* I. was not confined to a certain Number of Knights. *Id.* p. 231.

That a Precept was directed to the Sheriffs to ſend again ſuch Members as left the Parliament, or to chooſe others in their ſtead. *Id.* p. 239.

That ſometimes only one Burgeſs was Summoned; ſometimes two Burgeſſes. *Id.* p. 242. 244.

And but one Knight for a County, when two Burgeſſes, *&c.* *Id.* p. 246.

One Knight for a County, one Citizen for a City, one Burgeſs for a Burgh, and thoſe named to the Sheriff. *Id.* p. 249.

And that one Knight was diſcharged by the King, becauſe he was a *Banneret*, and a Writ was directed to the Sheriff to chooſe another. *Vid.* 5 *R.* 2. St. c. 4. in *fol.* 15. *Id.* p. 251.

Now if theſe be not true (as moſt certain they are not) 'tis fit that thoſe who have advanced ſuch pernicious and deſtructive Notions to this part of our conſtitution, ſhould be made to retract them, if not to profeſs their Repentance in Inſtances that may be as viſible and edifying, as their inſufferable juggling with Records and Hiſtorians has been publick and notorious.

And whereas there are many Burroughs in *England* which are not Corporations, but yet ſend Burgeſſes to Parliament, and have a preſcriptional Right to do it by popular Elections; yet, *to eaſe the King of labour, and not to deprive him of Power*, the Flatterers and Advancers of Prerogative have found out a New Project to get the Crown an Over-ballance in the Lower Houſe, and that is, by the King's incorporating ſeveral of ſuch Boroughs by Charters, and in thoſe Charters, by vertue of his pretended *Soveraign Authority, and abſolute Power without reſerve*, to limit the Elections to a few, and ſuch who were mentioned in the very Charter of creating them a Corporation; and in ſucceſſion only to ſuch a Number as was therein appointed, and to exclude all the other antient and preſcriptional Electors; which was a Notorious Violation of the Rights and Liberties of the Subject, and directly contrary to the aforementioned Statutes of 5 *R.* 2. and the 5th Chapter of *Weſtminſter* 1. ſo that even by this way the Crown in a ſhort time muſt unavoidably have had the diſpoſal of the Majority of the Members of the Houſe of Commons. *Hob.* 146. 5 *R.* 2. St. 2. cap. 4. *Weſtm.* 1. cap. 5.

But

But beſides this, there was another way found out of exalting Power, *viz.* to create New Burroughs by Charter, and in them likewiſe to limit Elections to a few; this was obtained in a Compliment of Loyalty, (and out of a profound Obedience to thoſe that underſtood very well how to gratifie and reward it,) by the extrajudicial Opinions of Judges, which ought to have been by Act of Parliament, as may appear from the 27 *H.* 8. enabling the ſeveral Counties, Boroughs and Towns in *Wales* to ſend Knights and Burgeſſes to Parliament.

The Caſe of *Dungannon* in *Ireland*. *Hob.* 14, 15. *Vid.* 12. *Co.* 120. 2 *Ro. Abr.* 197. n. 5.

27 *H.* 8. c. 26. *Pult. Stat.* fol. 219.

The words of the Statute are, "And that for this preſent "Parliament, and all other Parliaments to be holden, and kept "for this Realm, one Knight ſhall be choſen and elected to the "ſame Parliaments for every of the Shires of *Brekenoke*, *Radnor*, "*Mountgomery*, and *Denbigh*, and for every other Shire, with "in the ſaid Countrey or Dominion of *Wales*: and for every "Burrough being a Shire-Town within the ſaid Countrey or "Dominion of *Wales*, except the Shire-Town of the County of "*Mereoneth*, One Burgeſs; and the Election to be in like man"ner, form and order, as Knights and Burgeſſes of the Parlia"ment be elected and choſen in other Shires of this Realm. "And that the Knights and Burgeſſes, and every of them, ſhall "have like Dignity, Preeminence and Priviledge, and ſhall be "allowed ſuch Fees as other Knights of the Parliament have, "and be allowed, *&c.*

34 & 35 *H.* 8. cap. 13.

And ſo likewiſe from the 34. and 35. of *H.* 8. concerning the County Palatine of *Cheſter*, which Enacts, That "it ſhall have two Knights for the ſaid County Palatine, "and likewiſe two Citizens to be Burgeſſes for the City of *Che*"*ſter*, to be elect and choſen, Proceſs to be awarded by the "Chancellor of *England* unto the Chamberleyn of *Cheſter*, his "Lieutenant or Deputy for the time being. And ſo like "Proceſs to be made by the ſaid Chamberleyn, his Lieu"tenant or Deputy to the Sheriff of the ſaid County of "*Cheſter*: and the ſame Election to be made under like man"ner and form, to all intents, conſtruction and purpoſes, as is "uſed within the County Palatine of *Lancaſter*, or any other "County and City within this Realm of *England*: which ſaid "Knights and Burgeſſes, and every of them ſo elected and "choſen, ſhall be returned by the ſaid Sheriff into the Chance"rie of *England* in due form; and upon like pains as it is or"deined, that the Sheriff or Sheriffs of any other County "within this Realm, ſhould make their return in Caſe like. "And which ſaid Knights and Burgeſſes, and every of them ſo "elected and returned, ſhall be Knights and Burgeſſes of the "Court of Parliament, and have like Voice and Authority, to "all intents and purpoſes, as any other the Knights and Bur"geſſes of the ſaid Court of Parliament, have, uſe, and enjoy. "And in likewiſe ſhall and may take All and Every ſuch like "Liberties, Advantages, Dignities, Priviledges, Wages, Fees, "and Commodities, concerning this ſaid Court of Parliament,

"to

" to all intents, conſtructions, and purpoſes, as any other the " Knights and Burgeſſes of the ſaid Court, ſhall, may, or ought " to have, take, or enjoy.

Thus of right we ſee it belongs only to the Legiſlative Power of the Nation, to ordain Burroughs to ſend Burgeſſes to Parliament: but our Courts of Juſtice have been infected with New Notions and Schemes of Government, ſtarted and invented by fawning Minions, Paraſitical Favourites, and Mercenary Scribblers; and our Judges have been diſpoſed to receive them through their Ignorance of our Antient Government, and unacquaintedneſs with Records.

But to return from whence I have digreſſed. By this late hatched Invention of getting Surrenders of and Judgments againſt Corporations, it is Impoſſible but that the King ſhould quickly have a Houſe of Commons abſolutely at his Service and Devotion; and this can never be denied me, if the Reader will but look over the two Orders I have here ſubjoined, that the King was pleaſed to iſſue forth the ſame day with his Gracious Proclamation, for reſtoring Corporations to their Antient Charters, Liberties, Rights, and Franchiſes. The Orders follow.

At the Court at *WHITE-HALL* the 17th Day of *October*, 1688.

An Order of the King in Council. 17th *October*, 1688.

PRESENT,

The KING's moſt Excellent Majeſty,

His R. H. Prince *George* of *Denmark*,
Lord Chancellor,
Lord Privy Seal,
Duke of *Hamilton*,
Marquis of *Powis*,
Earl of *Huntingdon*,
Earl of *Craven*,
Earl of *Berkeley*,
Earl of *Moray*,
Earl of *Middleton*,
Earl of *Melfort*,
Earl of *Caſtlemain*,
Viſcount *Preſton*,
Lord *Godolphin*,
Mr. Chancellor of the Exchequer,
Maſter of the Rolls,
Lord Chief Juſtice *Herbert*,
Sir *Thomas Strickland*,
Sir *Nicholas Butler*,
Mr. *Petre*.

WHEREAS *in the Charters, Patents, or Grants made to ſeveral Cities, Burroughs, and Towns Corporate,* a Power is reſerved to his Majeſty by his Order in Council, to remove, diſplace and diſcharge the Mayors, Sheriffs, Recorders, Town-Clerks, Aldermen, Common Council-men, Aſſiſtants, Officers, Magiſtrates, Miniſters, Freemen, and other Members of the ſame. *His Majeſty is this Day in Council pleaſed to Order, and it is hereby ordered accordingly, that*

All Mayors, Sheriffs, Recorders, Town-Clerks, Aldermen, Common Council-Men, Assistants, Officers, Magistrates, Ministers, Freemen, and other Members of the said respective Cities, Burroughs, and Towns Corporate, which have or claim such Offices or Places by Charter, Patent, or Grant from the late King of blessed Memory, or from His Majesty since the year 1679. Except such Cities and Towns in His Majestie's Proclamation named, (whose Deeds of Surrender are inrolled, or against whom Judgments in Quo Warranto *are entred) be removed, displaced, and discharged, in Pursuance of the Power reserved as aforesaid, and they and every of them are hereby removed, displaced, and discharged accordingly.*

John Nicholas.

The Other is an Order of the King alone, in these words.

JAMES R.

An Order of the King 17th *October*, 1688.

WHEREAS in the Charters, Patents or Grants made to several Cities, Burroughs, and Towns Corporate, **a Power is reserved to Us to remove, displace and discharge by Order under Our Siguet and sign Manuel, the Mayors, Sheriffs, Recorders, Town-Clerks, Aldermen, Common Council-men, Assistants, Officers, Magistrates, Ministers, Freemen, and other Members of the same.** *We do accordingly hereby remove, displace and discharge all Mayors, Sheriffs, Recorders, Town-Clerks, Aldermen, Common Council-Men, Assistants, Officers, Magistrates, Ministers, Freemen, and other Members of Our said respective Cities, Burroughs and Towns Corporate, which have or claim such Offices or Places by Charter, Patent or Grant from the late King Our most Dear Brother of ever blessed Memory, or from Us since the Year One Thousand six Hundred Seventy Nine, except such Cities and Towns in Our Proclamation named, whose Deeds of Surrender are Inrolled, or against whom Judgments in* Quo Warranto *are entred: And they, and every of them, are hereby removed, displaced, and discharged accordingly, in Pursuance of the Power reserved to Us as aforesaid: whereof All Persons concerned are hereby required to take Notice.*

Given at Our Court at *Whitehall* the 17th Day of *October*, 1688. in the Fourth year of Our Reign.

By His Majestie's Command.

Sunderland, P.

Now upon these two Orders give me leave to make some few Reflections.

1. *Reflection on the foregoing Orders.*

The First shall be, That before this New Project or Invention of Surrendring Charters, which was hatched in King *Charles* the Second's time) Cities, Burroughs, and Towns Corporate had free Elections of their Mayors, Sheriffs, Aldermen, and all the

the other Governing Members that made up the Conſtitutive part of their ſaid reſpective Corporations: This was a Right and Priviledge the *People* had taken care *originally* to reſerve and ſecure to themſelves; and it has gone down till of late Years from the *firſt Conſtitution* of this ſetled Government: but after that our *Virtuoſi* had found out this Trick of Loyalty to enſlave the Nation, by voluntary Surrenders, and the Judges had contrived another, under a Legal colour, of ſeizing of Charters, from thoſe that were reſolved to uſe their Endeavours to preſerve and maintain the Glory of their excellent Conſtitution; then the Crown had the Power reſerved to its ſelf, of removing, diſplacing and diſcharging all the Magiſtrates, Miniſters, Freemen, and other Members of the ſame, as it pleaſed. This was,

1. At the Will and Pleaſure of the King in Council.

But this did not give content long; it was look'd upon as too great a Clog and Inconvenience; and too Inglorious for Soveraign Majeſty, as giving too publick an Account of his Actions. They flattered the Prerogative with Dr. *Brady's* clear Demonſtration, 'That all the Liberties and Priviledges 'the People [of *England*] can pretend to, were the Grants and 'Conceſſions of the Kings of this Nation, and were derived 'from the Crown. And Kings may reſume their own Grants, as they in their Princely Wiſdoms ſhall think fit and neceſſary. They would have him more Abſolute in himſelf, than to be obliged to acquaint his Council with what he had a mind to do: tho' the Council was no wiſe concerned in the Matter, either by way of Advice or Approbation; but only the King was to Publiſh ſuch a thing to them in Council, as the *French* King doth his Edicts, when he declares, *Tel eſt noſtre plaiſir:* Yet it was thought more politick to omit that Courſe, as making too great a Noiſe in the Numbers of Surrenders and Judgments of Corporations; and therefore,

Dr. Brady's *Compleat Hiſtory of* England, *Preface to the Reader*, fo. 1. *Vid.* Plato's *Dæmon.* pag. 289.

2. An Abſolute Power was reſerved to the King alone, by Order under the Royal Signet, and Sign Manuel, to remove, diſplace and diſcharge, if he pleaſed, All the Mayors, Sheriffs, Recorders, Town-Clerks, Aldermen, Common Council-Men, Aſſiſtants, Officers, Magiſtrates, Miniſters, Freemen, and other Members, of all the Cities, Burroughs, and Towns Corporate of *England*, ſo there would be a ſhort end of the ancient State and Frame of the *Engliſh*, that is to ſay, the beſt conſtituted Government in the World.

My Second Reflection ſhall be this, That by the Oaths of their reſpective Corporations, every Freeman and Member of ſuch Corporation, as well as of *London* (to which the Book particularly relates) is bound to defend and maintain the Liberties, Franchiſes, and Priviledges of ſuch their Corporations. 2. *Reflection.*

There are three Ingredients which make up a Freeman (as Sir *Francis Bacon* well obſerved in his Speech concerning the *Poſt-* *Dr.* Heylin's *Stumbling-Block of Diſobedience*, &c. *ch.* 5. *pag.* 208.

Post-Nati, That is to say, 1. *Jus Civitatis*, which did enable a Man to Buy and Sell, and to take Inheritances. 2. *Jus Suffragii*, a Voice in the Passing of Laws, and Election of Officers. And 3. *Jus honoris*, a Capacity of such Offices and Honours, as the State could give him.

Idem, p. 211. It is a *Fundamental Constitution* of the Realm of *England*, that every Freeman hath a Voice in the Legislative Power of Parliament, and it is an old Rule in Politicks, *quod Omnes tangit, ab Omnibus tractari debet*, and so acknowledged in a Writ of Summons of King *Edward* the First.

Rot. Claus. 23 *E.* 1. m. 3. *dorso.*

Therefore how pernicious are the Consequences of voluntary Surrenders!

1. It is a Sin against the Law of Nature, for any Man that is Free by the Constitution, to make himself a voluntary Slave.

2. It is a Sin against the Law of God, for any Man that is under an Oath, to break that Oath, and to Perjure himself, upon any pretence whatsoever.

3. It is a Sin against the Law of the Land, in that it destroys the Natural Right of every free-born Subject of *England*, to make free Election of Members to serve in Parliament.

4. It is an *abdicating* of our Ancient Constitution, a giving up our selves to be Governed according to Arbitrary, and Despotical will and pleasure, a renouncing of the Antient Laws of this Realm, 'originally established as Laws of the 'same, by our Own suffrance and free consent, and which we 'have bound our selves, by long use and custom, to Observe.

25 *H.* 8. c. 21.

In a Word, the People that have been guilty hereof, however they may have flattered themselves, or been flattered by Others, or *worse abused by those, that should Preach nothing but sound Doctrine*; they have been Treacherous to their God, to their Country, to their own Souls, and to their Posterity, and have as much as in them lay, dissolved 'the Foundation, Free-'dom, and form of their Common-wealth, which their Ance-'stors foreprised, when they first consented to have a King.

Vid. *Bishop* Bilson's *Christian Subjection*, 3 Pt. 280. Ed. 1586.

But how inexcusable were those that gave Judgment upon the Charter of the City of *LONDON*? For a Single and Inferiour Court of Justice to Judge and give Sentence to the Ruin of a Nation, from whom she might have expected her utmost Support and Security; what can be said that will not prove an aggravation of their Crime? *Other Men may be impudent and ignorant*, but for those of the learned Robe, their being upon the Bench, makes their Fact more Heinous. The Case was elabourately and fully argued before them by Council for the City; they told them how carefull the Law in all Ages had been to preserve Corporations, because of the infinite Mischiefs that would inevitably follow upon their Dissolutions.

Mr. Pollexfen's *Argument*, Ut Supra.

That even in the hottest and maddest of times, *viz.* Those of *E.* 1. *E.* 2. and *R.* 2. (when all those seisures and forfeitures were) they were never so Extravagant, as to suppose they had such

ſuch a power to deſtroy the being of Corporations, much leſs actually themſelves to deſtroy their Being.

It was repreſented to them, that ſuch a Judgment would remove us from our Centre, unhinge the whole Frame of this Admirable Government, make it an *Imperium plane Deſpoticum*, as a certain Reverend Dean has aſſerted it, and ſo we ſhould either have no Parliaments at all, that is to ſay, ſo choſen by the People as they ought, and of **old times** had been accuſtomed; or, if any, according to the New Modell'd conſtitution, I mean, of the Courts Nomination.

Dr. Pierce's *Vindication of the Kings Soveraign Rights*, &c.

This, I ſay, and much more than this was told them openly, That to deſtroy Charters would be in effect to deſtroy *England*; but it ſignified nothing with thoſe Reverend Judges, their Superiority on the Bench would ſuffer no Reaſons to weigh with them that came from the Bar; but they proceeded ſummarily to Judgment againſt it, contrary to their Oaths as Juſtices, *to ſerve the People according to Law* Eſtabliſhed, as you will ſee hereafter; againſt manifeſt conviction from the Inſuperable Arguments of thoſe that pleaded in its defence, or elſe they ought to have anſwered them that they were not ſo, from point to point *ſeriatim*, to have ſatisfied the World, that the City Council, in the grounds on which they went and inſiſted, were in the wrong, and their numerous Ancient Preſidents which they cited, were but little to the purpoſe; nay, it being a Caſe of ſo great a Conſequence, they ought at leaſt to have adjourned it into the Exchequer Chamber, there to have had it argued over again at the Bar, and then to have received the Opinion of all the Judges of *England*, and that too *ſeriatim*, on which to have grounded their Judgments: But nothing of this was done; when as all our Law Books as well as daily Practiſe, tell us, that in a Caſe of but five or ten pound a Year concernment, if there ariſe any difficulty in a point of Law in the Courts below about it, they have adjourned ſuch Caſe into the Exchequer Chamber, there to have it Solemnly argued and reſolved as before is mentioned. And ought not the Inheritance of *London*, which is the greateſt Inheritance of the Kingdom, to have had as equal Law? But this reached further, it went to the Irreparable Injury of the Subject as to the *Parliamentary Conſtitution*. Now the Higher theſe Men were in Place and Station, the more deſervedly Obnoxious they have made themſelves to the Law and Juſtice they have ſo heinouſly violated. For if to deſtroy the Government be not, let them anſwer what is, *High Treaſon againſt the Realm?*

28 H. 8. c. 7.

Glanvil, who was a learned Lawyer, and Chief Juſtice in *Henry* the Seconds days, above 500 Years ago, writ a Book of the Common Laws of *England*, which is the Ancienteſt of any Extant touching that Subject, informs us, that there was then in his time ſuch a thing as *High Treaſon againſt the Kingdom*; his Words are theſe, *Crimen, quod in legibus dicitur Crimen*

Cowels *Interpreter tit.* Glanvil.

Glanvil *l.* 1. c. 2. p. 1.

men læsæ Majestatis, ut de Nece vel seditione personæ Domini Regis vel Regni, &c.

Vid. Sanderson's *History of the life of King* Charles I. fo. 473.

In the Articles of High Treason and other Misdemeanors drawn up by Mr. Solicitor *Herbert*, (our late Chief Justice's Father) in King *Charles* the first's time against the Lord *Kimbolton*, and five Members of the House of Commons, these were two, *viz.*

1. That they had Traiterously endeavoured to subvert the Fundamental Laws and Government of this Kingdom.

5. That they had Traiterously indeavoured to subvert the very Rights and Beings of Parliament.

I cannot imagine what is possible to be said by way of Plea or Excuse in their favour, unless that then the City being pretended to be unruly and tumultuous, affronting the King with relation to his Government, that he had obstructed publick Justice by proroguing the Parliament, *&c.* There seemed an unavoidable Necessity to take some effectual Course to prevent the ill consequences of such Undutiful and Scandalous practices; and therefore the Judgment they pronounced was not intended by them to be of so high a Nature, as here it is aggravated; it was only to let the King *molliter manus imponere* upon them, till they returned to a sence of their Allegiance and *Loyalty*, and that this Judgment of theirs was only out of tenderness and *Loyalty* to his Person and Government.

Noy. 182; Darcy *versus* Albin.

To this, in short, I answer, Judges are not to go in Judgment according to their pretences of *Loyalty*, but according to the known and certain Rules of Law, and where they have None to direct them, to pray the Advice and Direction of the Parliament. *If partial Affection by private Discretion do govern publick affairs, there One Mans will* (says *Noy*) One Court of Kings Bench, may *become every Mans Misery.*

The Tryal of the Regicides, p. 213. *Printed*, 1679.

The King (says my Lord Chief Baron *Bridgman*) should not, nor ought to govern but by the **Fundamental Laws** of the Land, they that keep within the bounds of the Law are happy, and says he to *Cook* and *Peters*, You that are a Lawyer, know this in point of Law, and You that are a Divine know this in point of Divinity.

2 *Inst.* 526.

The Laws of the Realm have this Office to guide the Judges, in all Causes that come before them in the ways of right Justice, says my Lord *Cook*, who never yet misguided any Man, that certainly knew them, and truly followed them.

I shall make bold here to offer my Notion of Loyalty, and so submit my self, as to the Truth of it, to every Candid and Ingenuous Reader.

Mirr. de Jus. c. 2. §. 1. p. 215. *Id. in* English, p. 59.

The word *Loyal* is a Term of Law, and is indifferently applied to Things, and to Persons.

1. As to Things, the Mirrour of Justices tells us, *Action n'est autre chose que* loyall *demand de son droit.* An Action is nothing else but a *lawful* demand of a Man's Right. Again,

Again, a Pleader in Courts of Juſtice *ne mittera en Court faux delays, ne faux Teſmoignes, ne movera, ne profera neaux corruptions, deceipts, menſonges, ne auxi fauxes lies, ne conſentera, mes* loyalment *maintiendra le droit de ſon Client, cy que il ne chiet per folly, negligence, ne defaut de luy*; that is, he ſhall put no falſe dilatories into Court, nor falſe Witneſſes, nor move, nor offer any falſe Corruptions, Deceits, Leaſings, or falſe Lyes, nor conſent to any ſuch, but *loyally*, that is truly according to Law, maintain his Client's Cauſe, ſo that it fail not by any folly, negligence, or default in him. *Id. Frensh.* c. 2. Sect. 5. pag. 122.

2. As to Perſons, The Law of *England* is that which makes the King our Liege Lord, and not the *French*, or *Spaniſh* Kings; and Us his People, and not theirs; and accordingly both Prince and People are mutually Sworn, and were ſo from the firſt Original Contract, to the obſervance and keeping of the Laws which were Eſtabliſhed by their own free and voluntary Conſents. So that to obey the Commands of the King contrary to Law, is in truth *Diſloyalty*, and to diſobey ſuch Commands is *true Loyalty*.

For if there be any other Rule or Meaſure of Obedience than the Law preſumes, it will then follow that all the Judges of *England* have for above theſe 340 years been Sworn to be Diſloyal; and that *Diſloyalty* grounded on no leſs Authority than the Declaration and Appointment of both King, Lords, and Commons.

For do not the Judges in the face of God, Angels, and Men, ſolemnly Swear that they will "well and *legally* Serve our "Soveraign Lord the King and his People in the Office of Ju- Loyalment. "ſtice. In the Statute Books Printed in French it is, *que bien et* loialment *Services a noſtre Seigneur le Roy et ſon People en le Office de Juſtice, et que* loialment *counſeilleres noſtre Seigneur le Roy en ſes Beſoignes*, and that according to Law ye ſhall Counſel the King in his Buſineſs. Vid. *Oath of the Juſtices in* Raſt. Stat. f. 88. 18 E. 3.

But this is not All that is in the Oath, there is a more particular Branch in it which runs thus, *viz. And that ye deny to no Man,* [commune Droit] *Common Right by the King's Letters, nor none other mans, nor for none other Cauſe, and in caſe Any Letters come to You,* contraries a la Ley, *contrary to the LAW, that ye do nothing by ſuch Letters, but certify the King thereof, and go forth to* DO *the* LAW *notwithſtanding the ſaid Letters.* Ibid.

Upon which Oath, *Forteſcue*, who (as was before hinted) was Lord Chief Juſtice *tempore H.* 6. hath this Remark.

Juſticiarius inter cætera jurabit, ſe Juſtitiam miniſtraturum indifferenter Omnibus hominibus coram eo placitantibus, Inimicis & Amicis, nec ſic facere differet, etiamſi Rex per literas ſuas, aut Ore tenus, contrarium juſſerit, i. e. That he ſhall indifferently miniſter Juſtice to All Men, as well foes as friends, that ſhall have any ſuit or plea before him; and this he ſhall not forbear to do, though the King by his Letters, or by expreſs word of mouth, ſhall command the contrary. Forteſcue, de Laudibus Legum Angliæ, c. 51. p. 122. b.

And

And therefore it was insisted upon by all the Judges in Q. *Eliz.* time, that *n'est ascun* Offence *ou contempt* to her Majesty not to obey her Letters, or Commands, *que fuerant encounter la Ley de Terre, en queux Cases fuit dit, que Nul est-lie de obeyer tiel Commandment*, which were against the Law of the Land, in which Cases it was said, that None is bound to obey such Commandments, and that if they should obey such Commandments, it would be, *encounter lour Serement, en Offence de Dieu, sa Majestie, le Countrie, & Common-wele*, against their Oath, in Offence to God, her Majesty, the Country, and Commonwealth.

1 Anders. *Cavendishes case*, fo. 155.

From all which I shall only infer this, that then a Man is a Loyal Subject, and no otherwise ought to be accounted so, but when he acts according to the Law of the Land, for Law is the only Rule and Standard of Loyalty.

Having thus given you my Sentiments of what is the true Signification of Loyalty, which is squaring all our Measures and actions according to LAW in all publick Administrations; I cannot conceive it will be improper here to insert some short Collections I formerly made, out of the Reverend and Learned Dr. *Barrow*'s Sermons, concerning the Properties and Obligations of a Judge, *viz.*

Dr. Barrow's *second Volume of Sermons in* Octavo. *The Eighth Sermon*, pag. 42, 43. Levit. 19. 15.

1. A Judge should be free from all prejudices, and all partial affections; especially from those which are disadvantagious to the party in danger to suffer; such as tempt or incline to condemn him; from ill opinion, and ill will, from anger, envy, revengefulness, contempt, and the like: for he that is possessed with these, is no wise qualified to be a Judge; his eyes are blinded, or distorted, or infected with bad Tinctures, so that he cannot discern what is right, or that he seeth things represented in the wrong place, and under false colours: his mind is discomposed and disturbed, so that he cannot calmly and steadily apprehend or consider the just state of the Case; his will is biassed, and strongly propendeth one way, so that he cannot proceed uprightly in a streight and even course: being not indifferently affected, but concerned on one side, he is become a party, or an Adversary, and thence unfit to be a Judge; he hath determined the Cause with himself beforehand, so that no place is left to further discussion or defence; wherefore before such a Judge the best cause will fall, the clearest Innocence shall not preserve from Condemnation. He therefore that will undertake this Office, must first devest himself of all prejudices, must rid himself of all passions, must purifie himself from all corrupt inclinations, taking care not to come with a condemning mind, or a lust to punish the obnoxious party; otherwise a just exception lieth against him, and reasonably his Jurisdiction may be declined.

Jam. 2. 1. Mat. 22. 16. 1 Tim. 5. 21.

2. A Judge should never proceed in Judgment, without careful examination of the Cause, so as well to understand it. Even those, who out of indispensable Duty, or by a just Power may call

Idem, pag. 43, 44. Deut. 1. 16.

call others to account, are yet obliged to be wary, and never to pass Sentence without due cognizance of the Cause; otherwise they will Judge blindly and rashly; they will either decide wrongly, or so truly, that doing it must be imputed not to their Virtue, but to their Fortune; often they will be mistaken, and 'tis luck that they are not so always; and what plainer Iniquity can there be, than that the reputation or real Interest of any Man should be put to the arbitrement of chance; that he should be defamed, or damnified, not for a certain fault, but from an unhappy lott? As things view'd at a distance appear much different in bigness, shape and colour from what they are in nature and reality; so if we do not look nearly and narrowly, we shall greatly misapprehend the Nature, the Degrees, the right Characters of things, and of persons; then be our pretence to judge never so fair, yet our proceeding is unjust——so that if we would act the Judges part, we must patiently attend to, and heedfully sift the Cause: carefully mind what may be alledged in favour of the party concerned; and scan every Point and Circumstance which may serve to acquit him, or to excuse and extenuate his guilt, or otherwise it is to engage our selves into the Commission of palpable Injustice. *Id.* p. 45.

3. A Judge should never pronounce final Sentence, but *ex allegatis & probatis*, upon good Grounds, after certain Proof, and upon full Conviction. Not any slight Conjecture, or thin Surmise; any idle Report, or weak Pretence is sufficient to ground a Condemnation upon. The Case should be irrefragably clear and sure before we determine on the worse side:—— Every Accusation should be deemed Null, until both as to Matter of Fact, and in point of Right, it be firmly proved true, *Quod probari non potest, mihi infectum est.* *It is a rule of Equity and Humanity, built upon plain Reason, that rather a nocent person should be permitted to escape, than an Innocent should be constrained to suffer; for the Impunity of the one is but an Inconvenience, the suffering of the other is a wrong; the Punishment of the Guilty, yieldeth only a remote probable Benefit; the affliction of the blameless, involveth a near certain Mischief: wherefore it is more Prudent and more Righteous to absolve a Man, of whose guilt there are probable Arguments, than to Condemn any Man upon bare Suspitions.— It is indeed not fair Judgment, but meer Calumny to Condemn a Man, before he doth by sufficient proof appear Guilty. *Idem*, pag. 46.

De occultis Cordis alieni temere judicare iniquum est, & cum cujus non videntur opera nisi bona, peccatum est ex suspicione reprehendere, Joh. 3. 1 Ep. 1. Bern.

* *Idem*, pag. 47.

4. There are divers Causes wholly exempted from our Judgment, and which in no case we must pretend to meddle with; such as are the Secret Thoughts, Affections, and Purposes of Men, not expressed by plain words, nor declared by overt acts; for a Capacity of Judging, doth ever suppose a Power of Cognizance; and it being impossible for us to reach the knowledge of those things, we cannot therefore pretend to Judge of them. *Idem*, pag. 48.

Idem, pag. 49.

5. It is not commonly allowable to Judge concerning the Estate (either present or final) of our Neighbour in regard to God; so as to take him for a wicked Man, or to denounce Reprobation upon him: πολλὰ δεῖ γραφῆναι, καὶ παθεῖν πρὶν ἄλλου καταγνῶναι δυσσέβειαν: For the state of Men is not so much determined by single Actions, as by a Body of Practice, or by a long course and tenor of Life, compounded and complicated of Actions in number and kind unconceivably various.

Greg. Naz. Orat. 26.

Idem, pag. 51.

6. A Judge should not undertake to proceed against any Man, without warning and citing him to appear, or without affording him competent liberty and opportunity to defend and justifie himself. Judgment should not be administred clancularly, in dark Corners, but in open Court; not suspiciously, in a muttering or whispering way; but frankly, with a clear and audible Voice; not upon surprise, but with allowance of leisure and advice, that the Party may be able to apprehend his Case, and manage his Plea, for his best defence; for it may justly be presumed, that as he is most concerned, so he is best acquainted with his own Proceedings, and may alledge Reasons for them, which no Man can so well perceive as himself; it is therefore fit that he should be heard, before he is Condemned, that he may not suffer wrong; at least that he may be convinced that he doth not, and that our Proceeding may be cleared from Misprision; that also the World may be satisfied of Justice being done; and that likewise false Accusers may be liable to due Shame and Chastisement. The End of Justice, we may consider, is not to Condemn, nor to work Mischief to any one; but rather, so far as may be, to acquit and prevent Evil to all; at least it aimeth to clear the Truth, and state the Case indifferently; wherefore 'tis just, that all Advantage that well can be, should be afforded to the obnoxious Party for his Justification and Deliverance; at least that he be not denied equal Advantage with his Persecutors; Humanity would allow him some favour; the most rigorous Justice cannot refuse him leave to contest his Cause upon equal terms: wherefore 'tis fit that he should be acquainted with his Case, that competent time and means should be afforded him, to prepare for his Defence, that his Plea should receive, if not a favourable, yet a free Audience: the contrary practice is indeed rather Backbiting, whispering, supplanting, or Sycophantry, than fair and lawful Judging.

Idem, pag. 53.

God himself (as some of the Fathers observe) hath shewed us an Example of this Equity, Discendam igitur & videbo, *&c.* Gen. 18. 21.

Καίτοι σαφῶς ἤδει τῶν ἀνθρώπων ἐκείνων τὴν πονηρίαν Ἀλλ' ὅμως ἔφη καταβὰς ὄψαιτο, διδάσκων ἡμᾶς ἀναμένειν τῶν πραγμάτων τὴν πεῖραν. Theod. *Ep.* 119. & *P. Pelag. ad Eliam.*

Idem, pag. 54.

7. A Judge is obliged to conform all his Determinations to the settled rules of Judgment, so as never to Condemn any Man for acting that, which is injoyned, or approved, or permitted by them; he must not Pronounce according to his private Fancy, or particular Affection, but *according to the standing Laws*; which as they are the only certain Rules of Moral Action, the only Grounds of Obligation, the only Standards of Guilt and Innocence, so in reason they should be the sole Measures of Judging; he that proceedeth otherwise, is an

Arbitrary

Arbitrary and a slippery Judge; he encroacheth upon the Right and Liberty of those with whom he medleth, pronouncing them Guilty, whom God and Reason do proclaim Blameless.

8. A Judge should be a Person of good Knowledge and Ability; well versed and skilfull in the Laws concerning matters under Debate; endued with good measure of Reason, enabling him as to sift and canvas matter of Fact, so to compare them accurately with the rules of Right; for nothing is more absurd than an Ignorant, and unskilfull Judge. Men therefore of weak Capacity, of mean Education, of small Experience, are qualified to judge in few Cases, most things being placed above their reach, such never should presume to censure actions, the worth or moral quality whereof, depend upon the stating and resolution of abstruse, intricate, or subtle Questions. The decision of Controversies in Religion, Mysteries of Policy, or reasons of State, is to be reserved to those, who by study and experience have attained peculiar faculties to do it respectively.

Ἕκαστος κρίνει καλῶς ἀγινώσκει καὶ τούτων ἐστὶν ἀγαθὸς κριτής. Arist. Eth. l. 3.

Idem. p. 57.

9. It is proper for a Judge not to make himself an Accuser; nor to seek for Misdemeanors; not to draw more causes under his cognizance, than are in course presented before him: He should rather judge as out of constraint, than of choice; rather as sorry to find a necessity, than glad to snatch an Occasion of condemning offenders.

Idem. p. 58.

Sine dubio in omnibus statim accusationibus hoc agendum est, ne ad eas libenter descendisse videamur. Quintil,

10. He that pretendeth to judge others, should himself be Innocent; under no Indictment, and not liable to Condemnation; Is it not very improper for a Criminal, for one who is not only in truth, and in his own conscience guilty, but who standeth actually convicted of heinous offences, to sit upon the Bench, determining about the deeds and the states of others?

Idem. p. 59.

Cum ipse sis reus, in alterum audes ferre sententiam? Optat. 2.

11. It is the property of a good Judge to proceed with great Moderation, Equity, Candor, and Mildness; as a general Friend, a Friend to Justice, to the Publick, to Mankind, to the party Impeached; as a friend to Justice, he should be careful that the Defendant receive no wrong in his Credit, or Interest; as a lover of the publick, he should wish that no Offences or Scandals be found; out of humanity he should desire, that no man may incur the blemish of guilt, or pain of suffering; he should tender the parties case as compassionable, and desire that he may be delivered from the evil threatning him; this should render him willing to acquit, and free the party, apt to apprehend and interpret all things favourably, ready to excuse and mollifie the business what he can; far from picking faults out of obscure surmises, or slender pretences, from aggravating the miscarriages that are detected, from stretching the blame farther than it will reach of it self, or making the case worse then it needs must be, from pronouncing a harsh or heavy Sentence thereon. He should always be of Council to

Idem. p. 60.

Idem. p. 61.

to the defendant, pleading his cauſe ſo far as Truth and Equity will permit; putting himſelf in his caſe, and thence no wiſe dealing with him more rigourouſly than he, according to impartial Judgment, ſhould in the like caſe deem it equal that himſelf ſhould be dealt with: In fine, however the matter in the reſult appear to ſtand, he ſhould avoid Rigour and Extremity, he ſhould exerciſe Clemency and Mercy.

Dr. Barrow's 2d. *Vol.* Oct. 4th *Sermon* p. 141.

It belongeth to the Majeſty of Publick Juſtice to be Bold, Blunt, Severe; little regarding the concerns or Paſſions of particular Perſons, in compariſon to the Publick Welfare.

Idem. p. 149.

A Judge muſt not lay on the moſt Criminal Perſons more blame, or contumely than the Caſe will bear, or then ſerveth the Deſigns of Juſtice.

THE

THE Oath of a Judge.

Keeble's Statutes, fol. 119.

BEING MADE

Anno 18 Ed. 3. *and* Anno Dom. 1344.

YE *ſhall Swear, that well and* lawfully *ye ſhall Serve our Lord the King and his People in the Office of Juſtice, and that* lawfully *ye ſhall Counſel the King in his Buſineſs, and that ye ſhall not Counſel nor Aſſent to any thing which may turn him in Damage or Diſheriſon by any manner, way or colour. And that ye ſhall not know the Damage or Diſheriſon of him, whereof ye ſhall not cauſe him to be warned by your Self, or by other, and that* ye ſhall do equal Law, and Execution of Right to all his Subjects, Rich and Poor, without having regard to any Perſon. *And that ye take not by your ſelf or by other, Privily nor Apertly, Gift nor Reward of Gold or Silver, nor of any other Thing which may turn to your Profit, unleſs it be Meat or Drink, and that of ſmall Value, of any Man that ſhall have any Plea or Proceſs hanging before you, as long as the ſame Proceſs ſhall ſo be hanging, nor after for the ſame Cauſe. And that ye take no Fee, as long as ye ſhall be Juſtice, nor Robes of any Man, great or ſmall, but of the King himſelf. And that ye give none Advice nor Counſel to no Man great or ſmall, in no Caſe where the King is Party. And in caſe that any, of what Eſtate or Condition they be, come before you in your Seſſions with Force and Arms, or otherwiſe againſt the Peace, or againſt the Form of the Statute thereof made,* to diſturb Execution of the Common Law, or to Menace the People, that they may not purſue the Law, that ye ſhall cauſe their Bodies to be Arreſted and put in Priſon. *And in caſe they be ſuch, that ye cannot Arreſt them, that ye Certifie the King of their Names, and of their Miſpriſion haſtily, ſo that he may thereof Ordain a convenable Remedy. And that ye by your ſelf, nor by other privily nor apertly, maintain any Plea or Quarrel hanging in the King's Court, or elſewhere in the Countrey. And that* ye deny to no Man common Right, *by the King's Letters, nor none other Man's, nor for none other Cauſe,* and in Caſe any Letters come to you, contrary to the Law, that ye do nothing by ſuch Letters, *but Certifie the King thereof, and* proceed to Execute the Law, *notwithſtanding the ſame Letters. And that ye ſhall do and procure the Profit of the King and of his Crown, with all things where ye may reaſonably do the ſame.*

Juſtices of both Benches.

That he ſhall Serve the King in his Office, *Dalt.* 13.

To warn the King of any Damage.

To do Juſtice.

To take no Reward of any having a Suit.

To give no Counſel, where the King is a Party.

Stat. 2 *Ed.* 3. 3.

Stat. 20 *E.* 3. 1.

To maintain no Suit.

Not to deny Right for Letters.

To procure the King's Profit.

The Penalty of an Offendor.

And in case ye be from henceforth found in Default in any of the Points aforesaid, ye shall be at the King's Will of Body, Lands and Goods, thereof to be done as shall please him. As God you Help and all Saints.

2 *Chron.* Ch. 19. Vers. 6, 7.

And *Jehoshaphat* said to the Judges, Take heed what ye do; for you judge not for Man, but for the Lord, who is with you in the Judgment. Wherefore now let the fear of the Lord be upon you, take heed, and do it: for there is no Iniquity with the Lord our God, nor respect of Persons, nor taking of Gifts.

FINIS.

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A General Preface.